

DR #
1013422

Date: 10/20/04

DCC Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977DISCIPLINARY HEARING APPEAL FORMInmate: KEVIN BRATHWAITESBI#: 00315294RE: DISCIPLINARY HEARING

You have the right to appeal the decision of the Hearing Officer to the Commissioner of the Department of Correction, or his designee. Execution of any sanction imposed by the Hearing Officer shall be automatically stayed for seventy-two (72) hours immediately following the hearing **UNLESS YOU INDICATE ON THIS FORM THAT YOU DO NOT WANT** to appeal. If you do not file an appeal within seventy-two (72) hours, or if you indicate on this form that you do not want to appeal, the sanction shall be carried out immediately.



Yes, I do want to appeal.



No, I do not want to appeal.

I want the decision of the Hearing Officer to be:



Reversed, and/or



Remanded for further proceedings.

My reasons for making this appeal are:

I AM NOT GUILTY:
NO 24 hr. NOTICE BEFORE HEARING.

Appeal description: FIRST I WOULD LIKE TO BRING TO YOUR ATTENTION, THE FACT THAT I WAS DENIED MY RIGHT TO A PRELIMINARY HEARING. I WAS ALSO DENIED MY RIGHT TO GIVE A STATEMENT FULL. AFTER THIS INCIDENT TOOK PLACE G/O TURNER AND G/O LOMBARDI CAME TO ME AND TOLD ME THAT THEY BOTH KNEW THAT WHAT TOOK PLACE WAS WRONG AND THAT THEY WERE NOT GOING TO LIE FOR THESE 3-SGT'S. WHEN THE HEARING OFFICER CAME TO ME...

Date: 10-21-04Inmate Signature: [Signature]

To file this appeal, mail it to the DCC Hearing Office.

* The 72 hour time limit will run only while you are incarcerated.

(EXHIBIT - C)

To do my hearing I told him that I wanted to call c/o Turner and c/o Lombardi as witnesses to this incident. Now when the hearing officers questioned these two officers, they both changed their stories. ~~They~~ They said that they were both shaking down someone else's cell. Now let's be reasonable, if there was an emergency, and Sgt. Wallace had to call for back up, then why didn't c/o Turner and c/o Lombardi stop what they were doing and come to the aide of Sgt. Wallace. AND if there was such an emergency, then how did Sgt. Stevenson and Sgt. Phillips make it to bldg #17 all the way from bldg #20, before c/o Turner and c/o Lombardi could make it to my cell, from the cell next door to mine. Simple, because it didn't happen the way that these officers said it, and rather than lie, these two would rather say that they didn't see it happen. Which is still a lie. I never attempted to assault nor did I assault anyone. Also, pay attention to Sgt. Wallace's report, how Stevenson and Sgt. Phillips be a witness report if they had just showed up. If you

At these 3-officers statements, you can clearly see that they all just sat at a table together and had a meeting of the minds and came up with the exact same statement almost verbatim. All I ask is that you investigate this matter thoroughly

See, attached statement, and medical report. The medical report of my injuries clearly contradict the statements of these officers. And my statement is supported by these same medical reports.

Also: IF Sgt. Wallace claims that I put something in my mouth and swallowed it, then why didn't he tell the medical staff. All lies.

Also: Please contact LT. SALAS. He knows what really took place, and he will not lie for anyone.

NOTE: I have no prior institutional violence. Not even a fight in almost nine years. This matter needs to be investigated.

ON OCT, 9th, 04 AT APPROX, 7:00 A.M.
While being housed in the Security Housing
Unit (S.H.U.), Bldg #17 Cell-B-U-8. Sgt.
WALLACE came to my door and opened
my cell door. When I noticed that Sgt.
WALLACE had opened my cell door without
using the security bar on the door as
is procedure of protocol in the Security
housing unit (S.H.U.) I knew that something
was not right. Sgt. WALLACE then told me
that he wanted to search my cell. AT
the time Sgt. WALLACE came to my cell
I was shaving my head, and I put my
razor on the food tray shelf. Sgt.
WALLACE then took my razor off
the food tray shelf and put it on the
outside of the door. Sgt. WALLACE then
told me to strip. I took off all my
clothes and handed them to Sgt. WALLACE.
Sgt. WALLACE then told me to
lie on my back and be handcuffed, so I
search my cell. I had previous experience
with Sgt. WALLACE, so I told him that
I wanted a Lieutenant present while he searched
my cell. Sgt. WALLACE told me that he was
calling the Lieutenant. I told him
again that I wanted the Lieutenant

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to be present. Sgt. Wallace then said, "I ain't playin' no fuckin' game with you" and he sprayed me in my face with mace and slammed my door shut. Sgt. Wallace then told C/O Lombardi to open up the Food Flap. C/O Lombardi asked him, why? Sgt. Wallace told C/O Lombardi again to open the Food Flap at my cell. C/O Lombardi complied. When the Food Flap at my cell was opened, Sgt. Wallace proceeded to spray me in my face and all over my body with mace. At no time did I ever pose a threat to anyone, and the use of force was totally unnecessary. Sgt. Wallace emptied his can of mace into my cell, he closed the flap, and called his buddies, Sgt. [unclear] and Sgt. Phillips. When they came back to my cell door I was completely naked and my eyes and skin were burning from being sprayed with the mace. They then opened my cell door again. Sgt. Wallace told me to wrap something around my waist, because I was still naked. I grabbed my green bath towel and wrapped it around my waist.

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Wallace then told me to turn around and back up to the door to be handcuffed. I complied. When I turned around with my back to the door, and placed my hands behind me to be handcuffed, Sgt. Wallace, Sgt. Stevenson, and Sgt. Phillips grabbed me, and snatch me out of my cell and threw me on the ground on my stomach and handcuffed me behind my back. At no time did I ever resist or

struggle. Sgt. Wallace, Sgt. Stevenson, and Sgt. Phillips then proceeded to kick, punch, and stamp on me while I was handcuffed behind my back laying on the floor. This assault took place while other officers looked on in disbelief. They couldn't even understand why this was happening to me.

Wallace, Sgt. Stevenson and Sgt. Phillips then picked me up from the floor and walked me to bldg #20 and put me in a cell. Then nurse Kera came to the cell with Sgt. Stevenson and Sgt. Phillips. Nurse Kera proceeded to pour cartons of milk over my head and face to get the mace out of my eyes.

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Eyes. I told nurse Kera that I had been ASSAULTED AND I WAS IN A NEED OF MEDICAL treatment. I ALSO told Nurse Kera, that I WANTED her to document ALL OF my injuries. Nurse Kera then looked at my Arm AND SAID you'll be alright just don't MOVE AROUND. ONCE AGAIN I ASKED nurse Kera to document ALL OF my injuries. She refused. I then told Nurse Kera to CALL MENTAL health because I WAS going to KILL MYSELF. Nurse Kera, SAID, I DON'T CARE go AHEAD. Lieutenant Yoder came to the cage, AND I told him that I had just been ASSAULTED by OFFICERS, AND Lieutenant Yoder said you look O.K. to me. I WAS TAKEN to bldg #18 AND put in a hole, AND I WAS told that I be there for 15 DAYS. I knew their intentions were to keep me in the hole UNTIL ALL OF my injuries were NO longer visible. When I realized that I wouldn't get ANY help on the 8-4 shift. I waited until the shift changed AND I ASKED to SPEAK to the Lieutenant. IT WAS obvious the FIRST shift had passed and I

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that I was not to be seen. When I realized that no one was going to help me, I ~~tried~~ tied my sheet onto the light fixture and attempted to hang myself. When the officers in bldg #18 saw me hanging from the ceiling, Sgt. Carpenter stood outside my door with approx. six other officers. She then opened my door, and instead of ordering the officers to come to my aide, she sprayed me in my face with mace. I was then seen by nurse Holly, and nurse Holly told Lieutenant Rispoli to take all of my sheets and mattress. Once again I was in my cell completely naked. Two days later I was sent to the infirmary and placed on suicide watch. When I reached the infirmary, nurse Helwerda, documented all of injuries I had sustained during assault. The next day, nurse came to my cell and documented my injuries again. My injuries consisted of, a swollen eye, swollen jaw, busted and lacerated lips, three teeth on the bottom, two loose on top, bruises on my arms and back, three cracked ribs, bruising on

Front Shoulders bruised, swollen head ~~and~~ bruised shoulders Top and back, cut ~~on~~ under left eye, and scraped and bruised ~~on~~. The next day, Monday, Oct, 11, 04 I was seen by Dr. Rogers. ~~The~~ As A result of this entire incident, I filed a grievance and wrote letters to Warden Casper and deputy Warden Burtis. I also filed a Medical grievance in regards to Nurse Kera neglecting her duties and attempting to cover up the actions of these officers.

It is also to be noted: That the officers that witnessed the ASSAULT were C/O Turner, C/O Lombardi and C/O Burton. See their reports. At no time was I the aggressor AND at no time did I physically resist.

It is also to be noted: That Nurse Brenda Holwerda and Nurse Ellen ~~the~~ the Shift Commander and told ~~me~~ it all of my injuries needed to be ~~photographed~~ ~~photographed~~. Also, LT. SHIPS WAS NOTIFIED. Burton was notified, LT. ~~Endre~~ NOTIFIED, LT. SCARCE WAS NOTIFIED. CAPT MORENO WAS NOTIFIED. Also filed a grievance request. All of my injuries be photographed. One ever came to photograph



Infirmery Intake Form

Nursing Assessment Protocol

Use Progress Notes for Additional Documentation

Inmate Name: BRAITHWAITE, KEVIN Date: 10/10/04 Time: 0010
 Number: 315294 Date Of Birth: 9-27-62 Medications: see MAR
 Gender: M Facility: DCC Medications: see MAR
 Allergies: NKDA Appearance: ☒ No Distress ☐ Minimal Distress ☐ Acute Distress

SUBJECTIVE: Chief Complaint: rib pain, attempt to "hang" self

Symptoms: ☐ Delayed Verbal Response ☐ Delayed Motor Response ☐ Bleeding / Bruising Behind Ears
☐ Uncoordinated Movement ☐ Confusion ☐ Lack of Attention ☐ Memory Loss
☐ Vision Changes ☐ Loss of Balance ☐ Headaches ☐ Drowsiness
☐ Pain: Where: _____ Scale 1 2 3 4 5 ☐ Decreased LOC ☐ Seizures

OBJECTIVE:

Temp: _____ Pulse: 93 Resp: 18 B/P: 149/98 Pulse Ox: _____ WT: _____ Finger Stick: _____

☐ Evidence of trauma

Head: _____
 Torso: ecchymosis on back
 Extremities: _____

☐ Wounds

Head: open
 Torso: wounds
 Extremities: noted

☐ Deformities

Head: none
 Torso: _____
 Extremities: _____

Mark and Describe on Diagram

Legend

A...Abrasion
 B...Bruise
 C...Raccoon's Eyes
 L...Laceration
 R...Rash
 O...Other

ASSESSMENT:

☐ Critical - Immediate Referral Local Emergency Department

☒ Stable - may house in infirmary

☐ Other: _____

Nurse's Signature and Stamp

Brenda Holwerda RN

Time: 10-10-04



INFIRMARY/OBSERVATION PROGRESS NOTES

NAME: Braithwaite, Kevin NUMBER: 315294

DATE	TIME	NOTES
4/04	0010	<p>Received inmate to Infirmary. A - Hey, Brenda, I need pictures taken of my injuries" D - Upper & lower lips & noted abrasions. (R) posterior back & noted ecchymosis noted, & open areas noted. VS: WNL, Neuro WNL. A - Alt in conflict / coping skills P - maintain Level III and monitor. — Holwerda</p>
4/04	0900	<p>(S) Unruffled (D) lying on floor & eyes closed respirations unlabored & no S/S of distress noted. (A) Alterations in conflict / coping skills level II. (P) continue & plans of care — Holwerda</p>
4/04	0450	<p>(S) "Would you please take a look at my injuries and write them down?" (D) Sclera of left eye & blood visible. Ecchymosis noted on posterior tibia bilaterally. Area on Rt tibia approximately 3cm by 5cm (L tibia 3cm by 3cm). Ecchymosis noted on upper back. Ecchymosis on left bicep measuring approximately 5cm by 5cm. I/M states upper 2 teeth are loose, states 3 lower teeth are loose. Abrasions & swelling noted on both upper and lower lip. I/M states ribs are sore. (A) Pain (P) Continue & plans of care — Ullrich, RN</p>



INFIRMARY/OBSERVATION PROGRESS NOTES

NAME: Branthwhite Kevin NUMBER: 315294

DATE	TIME	NOTES
10/11/04	0615	<p>⑤ Did you include the information about my left jaw and right arm in your report?</p> <p>⑥ LHM's left mandible area appears slightly swollen compared to right. Abrasion right upper arm has abrasion measuring approximately 6cm by 4cm.</p> <p>⑦ Altertude in comfort</p> <p>⑧ Continue c plan of care. Moderate pain - Elected RN</p>
10/11/04	1130	<p>BP at 033 this A.M. 20/89 Now Refuse BP from 2 Nurses. Also meds out of date. P1/Rodgers here + aware @ all compliance. Plan encourage compliance. (M.D. Dunn)</p>
10/11/04		<p>pt. seen + examined</p> <p>From over @ the situ pt refusing to take BP meds. Now pt in infirmary & refusing to have BP taken too.</p> <p>I/M did allow NSG to take BP while I was present. BP = 165/101</p> <p>do rib pain/soreness only.</p> <p>Heart - NENOM Lungs - CTA b/L</p> <p>Neck - no bruits Chest - (L) sided rib pain</p> <p>EXT - bruising (L) UE</p> <p>Back - (R) upper bruising, superficial laceration</p> <p>Mouth - bottom lip swollen, bruising</p> <p>APP: 1. S/P ART'd - Rib pain, Bruising. Insulting</p> <p>2. HTN - uncontrolled, noncompliance</p> <p>✓ A BP med doses & freq. - Motrin PRN</p> <p>✓ encourage pt to take meds + be compliant</p> <p>✓ cont to monitor</p>